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ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

U.S. DISTRICT COURT
NORTHERN DIST. OF TX.
FT. WORTH DIVISION

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CLERK OF COURT

RUDY RODRIGUEZ,

Plaintiff,

VS.

CONAGRA GROCERY PRODUCTS
COMPANY,

Defendant

CIVIL ACTION NO.
4:03-CV-055-Y

PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff moves for judgment on liability. The evidence shows that ConAgra Grocery Products Company discriminated against Plaintiff because ConAgra erroneously believed that he had a disability.

I. SUMMARY

1. Elements of the Claim

The elements of Plaintiff's case are as follows. First, Plaintiff must prove that he has a "disability" as defined by the Texas Labor Code. Plaintiff meets this definition because ConAgra regarded him as being so substantially impaired that he was unfit for any conceivable kind of job.

Second, Plaintiff must prove that he was qualified for the position. Plaintiff proved this by doing the job for several weeks as an employee of a staffing agency, and he did the job so well that he was offered permanent employment. Furthermore, ConAgra's representative has testified that Plaintiff was able to perform all of the essential job functions.

Third, Plaintiff must show that his disability was a motivating factor for the employer's decision to discriminate. ConAgra admits that its perception of Plaintiff's diabetes was the sole cause for its decision.

2. Legal and Factual Grounds

These are set forth in the brief in greater detail, but to summarize this is a case of disability discrimination in violation of the Texas Labor Code. Plaintiff is a diabetic who was offered a job subject to passing a drug test and a pre-employment physical. At the pre-employment physical the physician performed a urinalysis but no blood test. Based solely on the results of the urinalysis, which tells a physician absolutely nothing about whether a diabetic has his blood sugar under control, ConAgra withdrew the job offer.

Plaintiff's own doctor and one other expert on diabetes have examined Plaintiff in detail, including blood tests, and have no question regarding Plaintiff's qualifications. Plaintiff will show that ConAgra had a statutory duty to make an individualized assessment of his ability to do the job, and that it failed to do so. As a result, ConAgra erroneously believed that Plaintiff had a disability and it discriminated against him by withdrawing the job offer.

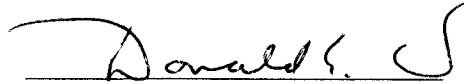
3. Citations to Appendix

These are contained in the brief supporting this motion.

4. Relief Requested

Plaintiff seeks an order establishing the defendant's liability for violating the Texas Labor Code, leaving only the issue of Plaintiff's damages for trial. Plaintiff also requests that the order include a permanent injunction prohibiting ConAgra from denying work to a diabetic applicant without performing a test known as a hemoglobin A1c.

Respectfully submitted,



Donald E. Uloth

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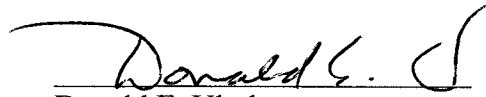
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Attorney for Plaintiff

CERTIFICATE OF SERVICE

A true and correct copy of this document has been served by certified mail, return receipt requested, on this 31st day of October, 2003, to Helen Thigpen, Haynes and Boone, L.L.P., 2502 N. Plano Rd., Suite 4000, Richardson, Texas 75082-4101.



Donald E. Uloth